IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2278 OF 2004

Kabeer Dhondiram Kadam ... Petitioner

versus

State of Maharashtra ... Respondent

...

Mrs. R.R. Dhuru, for the Petitioner.

Mr. V.B. Konde Deshmukh, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

24th March 2005

P.C.:

. Heard Counsel for the parties. Rule. Rule made returnable forthwith by consent. Mr. Konde Deshmukh, A.P.P., waives notice for the Respondent. As short point is involved, petition is taken up for final disposal forthwith by consent.

. This petition through jail takes exception to the order passed by the Deputy Inspector General of Prisons, Western Zone, dated 19th May 2004, rejecting the Petitioner’s request for furlough leave. Two reasons have been recorded for rejecting the furlough leave. The first is that the surety was not found on the address furnished by the Petitioner. The second reason is that if the Petitioner is released, there is danger to the life of witnesses as is the police report placed on record.

. Insofar as the first ground is concerned, Counsel for the Petitioner has invited my attention to the letter sent by the relative of the Petitioner to the Petitioner in jail informing the Petitioner that police have not visited so far for making any inquiry. In other words, it is suggested that the fact on which the competent authority proceeded to reject the prayer for furlough leave that surety was not found on the address furnished by the Petitioner is incorrect, inasmuch as that report is submitted without proper inquiry. This aspect will have to be thoroughly verified by the

concerned agency. Only then the competent authority may proceed to decide the furlough leave application on that count. Learned A.P.P. fairly submits that if fresh furlough leave application is preferred by the Petitioner giving correct and latest address of the surety, necessary inquiry will be done by the proper officer and decision will be taken by the competent authority on the basis of finding of such inquiry. That assurance is accepted.

. Insofar as the second ground is concerned that if the Petitioner is released, there is danger to the life of witnesses, by itself, cannot be a ground to reject the prayer for furlough leave in toto. In such a case, the option available to the competent authority is to impose strict conditions on the prisoner including that he shall not enter the area where the witnesses ordinarily reside. But there is no reason to reject the furlough leave application in toto. This course ought to be adopted as it is well-settled that furlough leve is a matter of right of the prisoner.

. Accordingly, this petition is disposed of with direction to the competent authority to examine the case of the Petitioner for furlough leave, if such application is made, on its own merits in accordance with law, and may grant relief to the Petitioner by imposing strict conditions as may be advised.

. Copy of this order be forwarded to the Petitioner as this petition is filed through jail.

. Court records word of appreciation for the able assistance given by Mrs. Dhuru as amicus curiae.

(A.M.KHANWILKAR,J.)